

GUILTY PLEAS — Court need not advise defendant of right to aggravation/mitigation hearing

Revised 11/2009

Rule 17.2, Ariz. R. Crim. P., requires the trial court to address the defendant personally in open court and inform him of the rights he is giving up by pleading guilty or no contest. See *State v. Djerf*, 191 Ariz. 583, 594 ¶36, 959 P.2d 1274, 1285 ¶36 (1998). But Rule 17.2 does not require the trial court to advise the defendant that he is entitled to an aggravation/mitigation hearing. In *State v. Gannon*, 130 Ariz. 592, 638 P.2d 206 (1981), the defendant pleaded no contest to second-degree murder under a plea agreement requiring him to serve a 21-year sentence. On appeal, the defendant argued that the trial court could not impose a sentence greater than the presumptive sentence without first holding an aggravation/mitigation hearing and finding aggravating circumstances. The Arizona Supreme Court disagreed:

Rule 17 imposes a duty on the court to advise the defendant of certain rights and the consequences of pleading no contest. It does not, as defendant asserts, address any duty of the court to advise the accused of a right to an aggravation/mitigation hearing.

Id. at 596, 638 P.2d at 210. The Court found that before the trial court accepted the plea, the trial court reviewed with the defendant "the crime charged, the aggravating circumstances, the range of sentence, and the ineligibility for parole or commutation until two-thirds of the sentence imposed was served." *Id.* The trial court also specifically questioned the defendant about the sentence to be imposed and the fact that he would have to serve at least 14 years of his 21-year

sentence. The defendant again said he wanted to enter a plea. The Arizona Supreme Court concluded that "the requirements of Rule 17.2 were met." *Id.*